

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND

Office of Zoning and Administrative Hearings
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Rockville, Maryland 20850
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www.montgomerycountymd.gov/mc/council/hearing.html

IN THE MATTER OF:
WINCHESTER HOMES, INC.,

Applicant and Contract Purchaser

Alfred Blumberg, AICP
Michael Conley
Glenn Cook
Gary Ehrlich, P.E.
Jeffrey Lewis, P.E.
Daniel Lyons

For the Application

Stacey P. Silber, Esq.
Attorney for the Applicant

Zoning Application No. G-839

Neighbors

Michael Shankman
Chuck Thompson

In Support of the Application

Before: Philip J. Tierney, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. SUMMARY

The Applicant requests rezoning from the R-200/TDR (transferable development rights) and R-200 Zones to the RT-8 Zone of 6.09 acres located on the south side of Maryland Route 28 at the northern edge of North Potomac within the Potomac Subregion. The Applicant proposes to build 45 townhouses at a density of 7.4 dwelling units per acre which will abut an existing 134-townhouse complex to the east that is built at a density of 8.6 dwelling units per acre. The proposed development also abuts the historic Pleasant View Methodist Episcopal Church property to the north and west and five single-family detached homes to the south.

Under the RT-8 Zone, the Applicant must show that the site is either designated for the zone, or there is a need for a transition, or the proposal is appropriate given the location and density sought. The Applicant presented sufficient evidence to show that the proposal is appropriate for the location and density sought. The proposed density is consistent with abutting and nearby townhouse communities and is compatible with development in the area.

The Applicant filed under the optional method, which allows limitations to be placed on density, land use, building standards and staging. The application includes binding elements that provide for extensive setbacks and screening from the most impacted neighbors, the historic church property and the five single-family detached homes. Another binding element provides for reduction in impervious surface from 75% to less than 40%. These amenities insure that the development is appropriate for this location and will be compatible with its neighbors.

The record also supports a conclusion that the proposed zoning is in the public interest. Both the Technical Staff and the Planning Board recommend approval. The development is consistent with goals and objectives of the master plan in providing for affordable housing, maintaining the integrity of historic property and promoting smart growth objectives. In addition, the proposed development is supported by adequate public facilities. For these reasons, it is recommended that the application be approved.

II. STATEMENT OF THE CASE

Local Map Amendment (LMA) Application No. G-839, filed on September 6, 2005, requests reclassification from the R-200/TDR and R-200 Zone to the R-T 8 Zones of 6.09 acres of land known as Parcels N-721 and N-667 and located at 11800 Darnestown Road, Gaithersburg, Maryland, in the 6th Election District.

The Technical Staff of the Maryland-National Capital Park and Planning Commission (“MNCPPC”) reviewed the application and recommended approval in a report dated March 24, 2006. The full Planning Board considered the application on April 27, 2006 and unanimously recommended approval.

A public hearing was held on May 2, 2006 at which time evidence was presented in support of the application. The application is unopposed. The close of the record was extended until May 12, 2006 to permit the Applicant an opportunity to revise the application and permit parties of record an opportunity to comment on the revisions.

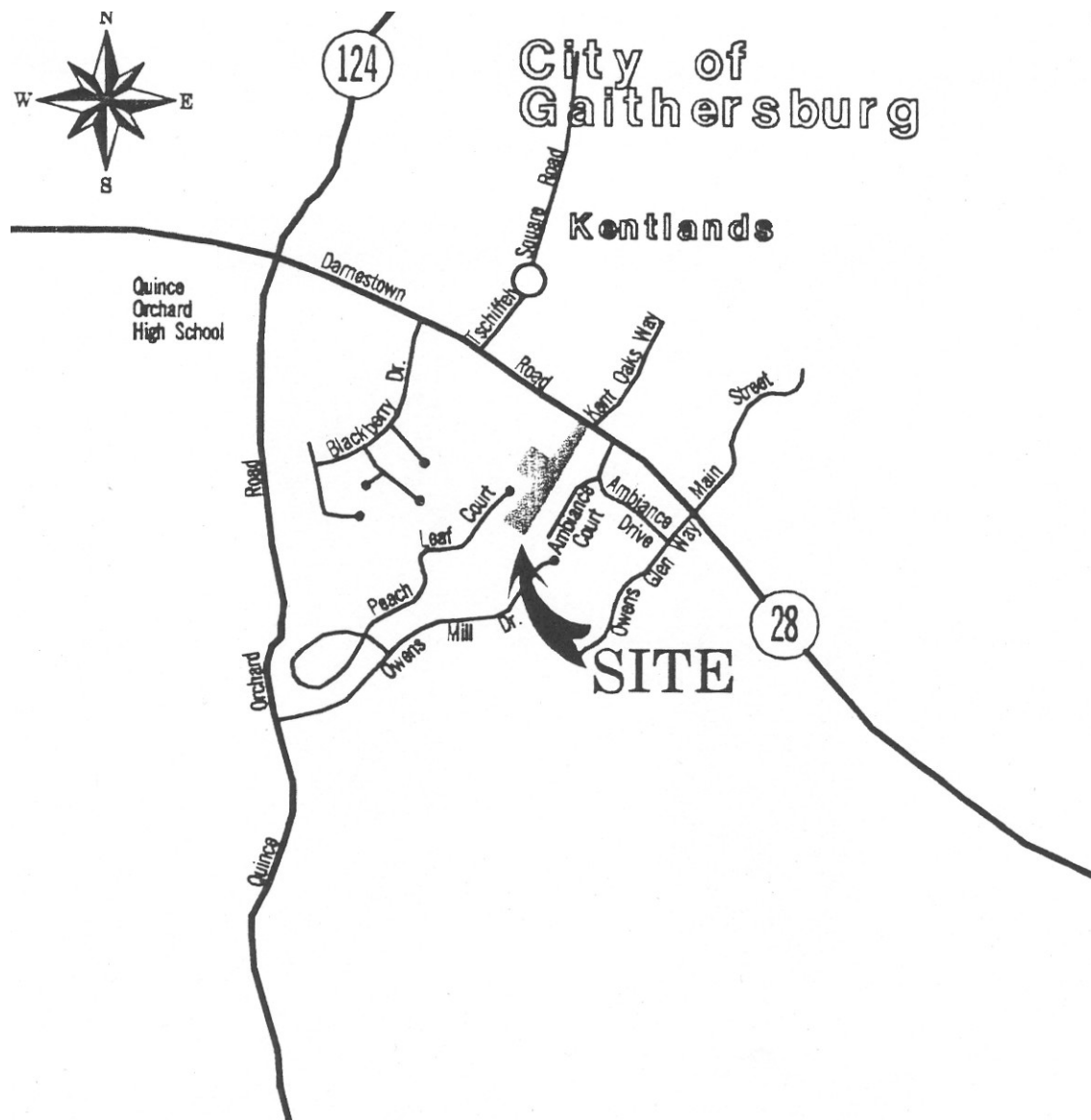
III. FINDING OF FACTS

For the convenience of the reader, the findings of fact are grouped by subject matter. Where there are conflicts in the evidence, these conflicts are resolved under the preponderance of the evidence test.

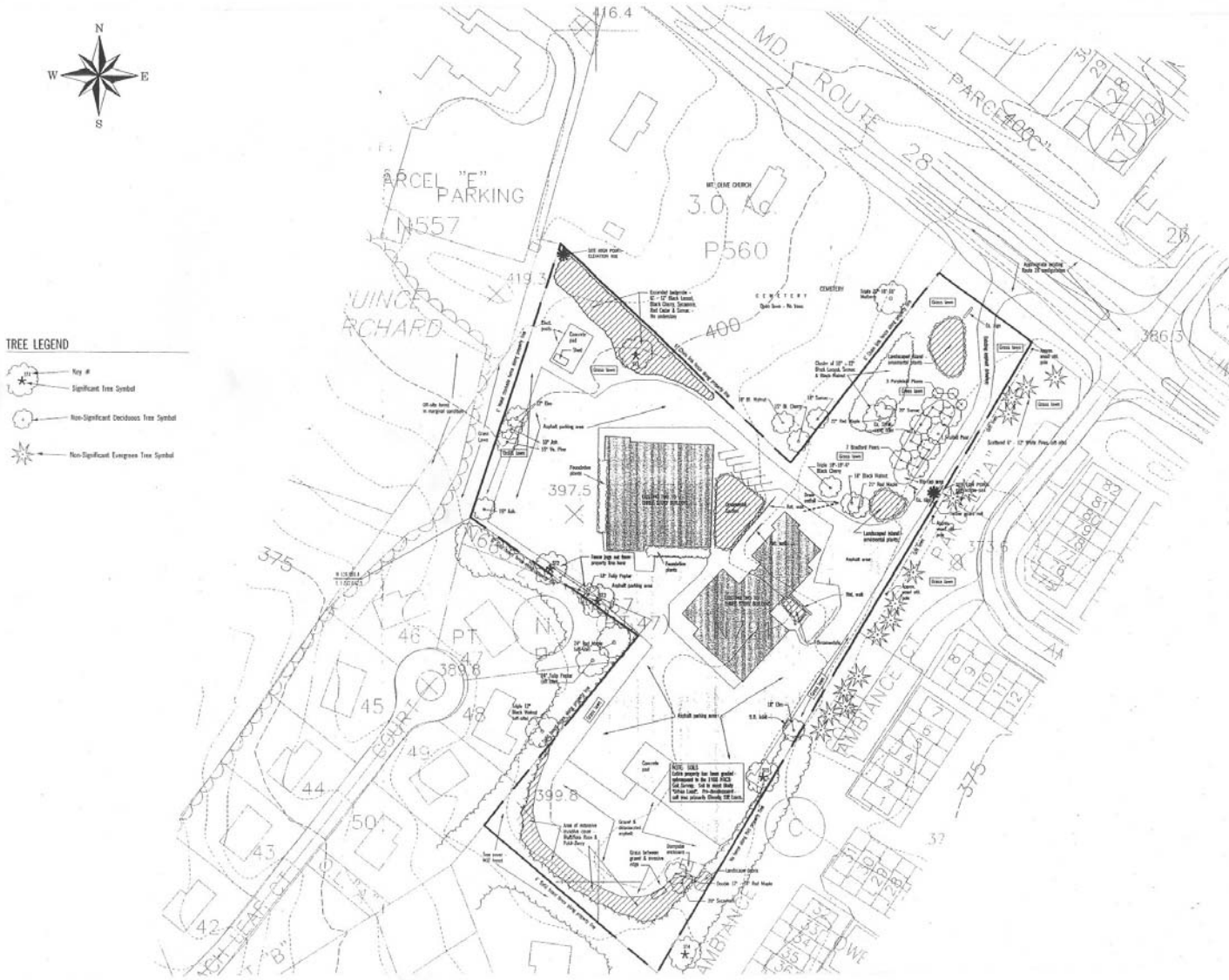
A. SUBJECT PROPERTY

The subject property is located on the south side of Maryland Route 28, also known as Darnestown Road, about 1,000 feet east of Tschiffely Square Road. The property is located at the northern tip of the emerging community of North Potomac. It lies directly south of the City of Gaithersburg. The property is an irregular “T” shaped parcel of 6.09 acres. The site possesses about 134 feet of frontage along Route 28 and extends about 870 feet in depth. The location of the site is depicted on the next page.

The site has been used as the Christian Life Center since 1978 and is developed with three industrial type buildings. The Center consists of a large worship center, administrative offices



and parking areas. This form of development causes the site to have an impervious surface of about 75%. The site's topography is relatively flat with a gradual slope from south to north. Access to the site is by way of a single driveway from Route 28 and only right turn in and right turn out movements are permitted. The shape of the site, its current use and natural features are shown on page 6.



B. ZONING AND PLANNING HISTORY

The 1958 Comprehensive Zoning applied the Rural-Residential (R-R) Zone to this area of the County and classified the property for half-acre residential density. In 1973 the R-R Zone was replaced by the R-200 Zone but authorized residential land uses and density essentially the same as under the previous zoning. In 1982, comprehensive zoning applied the R-200/TDR Zone to most of the site and permitted development of the site and adjacent properties at a density of 3 dwellings per

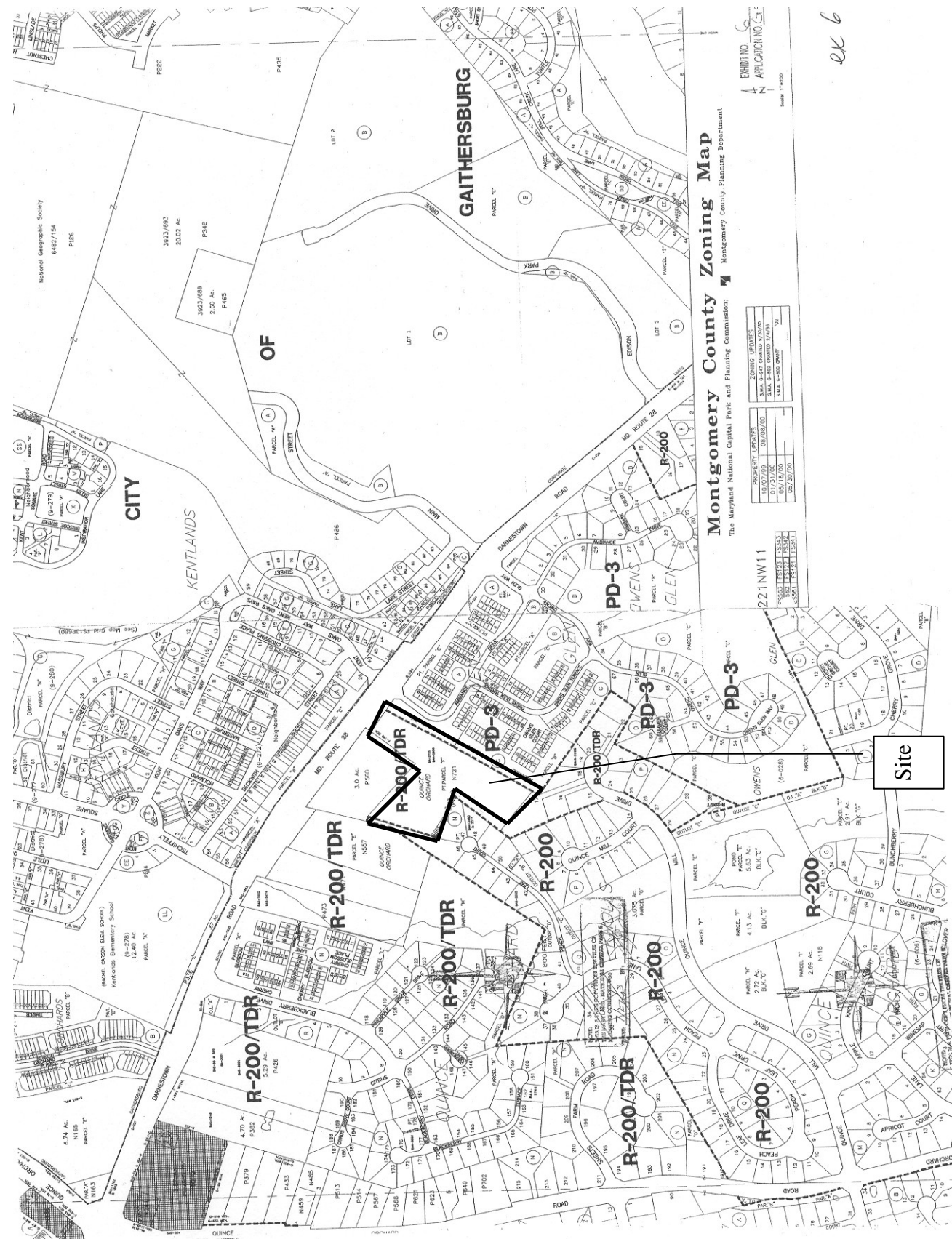
acre, provided the TDR option was applied to land of at least 10 acres. This option permits both single family detached homes and townhouses as part of a plan of subdivision.

The property lies within an area governed by the recommendations of the Potomac Subregion Master Plan, approved and adopted in 2002. The 2002 master plan recommends the retention of the current R-200/TDR zoning. All of the relevant area located south of Route 28 reflects similar density. Portions of the area located east of the site are classified under the PD-3 Zone, which permits planned development at an average density of 3 dwelling units per acre. The PD-3 Zone permits both single family detached homes and townhouses as part of an approved development plan. This zoning pattern is depicted on page 8.

C. SURROUNDING AREA

The surrounding area must be identified in a floating zone case so that compatibility and other issues can be properly evaluated. The “surrounding area” is defined less rigidly in connection with a floating zone application than the zoning neighborhood of a Euclidean zone application.

In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, Technical Staff recommends designating a surrounding area generally bounded by Route 28 on the north, Quince Orchard Road on the west, and the Muddy Branch Park on the east and south. The Applicant would extend the area north across Route 28 into the City of Gaithersburg but not extend it to the Muddy Branch Park to the east and south. The Applicant’s surrounding area is bounded by Quince Orchard



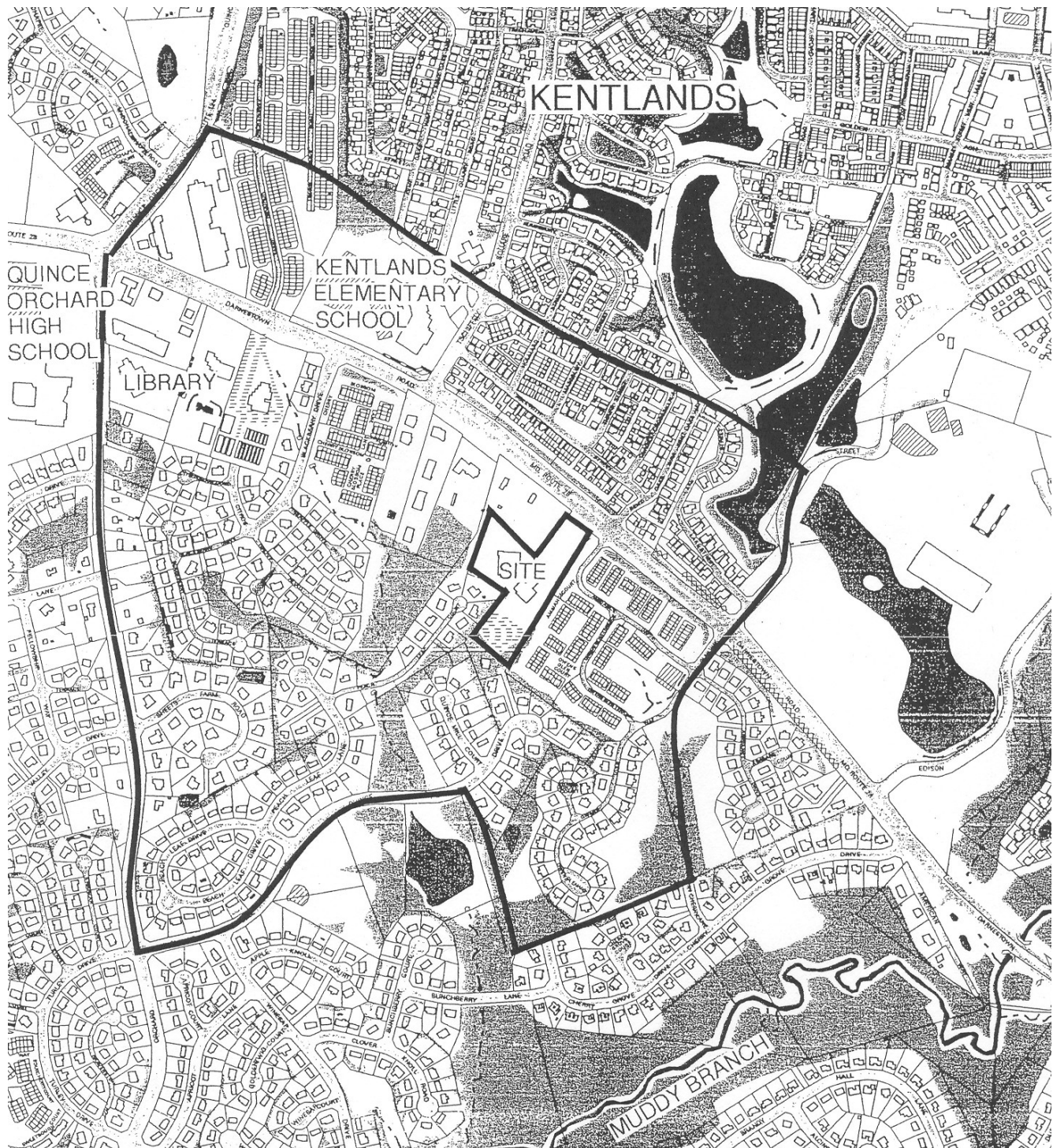
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Road on the west, an area about 700 feet north and parallel to Route 28 on the north, and Quince Orchard Knolls subdivision and Owen Glen Way to the south and east.

The Applicant's recommended area forms a more logical boundary given the size of the property, its central location within the area and the proposed use. The subject property falls at the center of the Applicant's surrounding area and development impact would radiate out from the center to include areas in all directions. Route 28 does not divide the community but serves as a transportation link for both sides of the road. The Applicant's eastern and southern boundaries are also more logical since they include only those properties within reasonable impact from the proposed development as limited by the application. The Staff's eastern and southern boundaries extend far beyond any potential impact from the proposed development given its size and limitations. Therefore, the Applicant's recommended area will be used for the evaluation of the proposed rezoning. This surrounding area is depicted on page 10.

The land use and zoning pattern of the area reflects a predominately residential character supplemented with institutional and commercial areas. The institutional uses include a library, fire station, school and several churches. The commercial uses include the Quince Orchard Commercial Center, a gas station and two special exceptions: a nursery and garden center and a medical and dental clinic. These uses are concentrated along Quince Orchard Road or Route 28, which has been recently upgraded to major highway consisting of 4 lanes within a 150-foot right of way divided by a median strip. The improved road contains left turn storage lanes and acceleration/deceleration lanes along the sides.

Most of the residential uses are located east of the nursery. The Orchard Knolls residential community contains 150 homes that have access by way of Blackberry Drive. The east side of Blackberry Drive contains 67 townhouses that were built as a part of the Orchard Knolls subdivision plan. The remaining 83 units are single-family detached homes located on lots of about one-third of an acre on the average. The entire subdivision was planned and built under the R-200/TDR zone and reflects a density of 3 dwelling units per acre. A proposal to build an unspecified



number of townhouses on the nursery site under LMA G-834 for the RT-8 Zone was denied by the District Council on October 25, 2005.

Located further east is the Prince of Peace Lutheran Church and a medical and dental clinic operating as a special exception under the R-200/TDR Zone. The historic Pleasant View Methodist Episcopal Church and a related school and cemetery abut the subject property to the north and west. Several single family detached homes that are part of the Orchard Knolls subdivision abut the site to the west and south. These homes were developed under the R-200/TDR Zone. Bordering the site on the east is the 15.5 acre Owen Glen subdivision developed under the PD-3 Zone with single family detached homes and 134 townhouses. The townhouses reflect a density of 8.6 dwelling units per acre.

Located across Route 28 is the City of Gaithersburg and its Kentland's community, a development that reflects both single-family detached homes and townhouses. The townhouses are developed at a density of 6.50 dwelling units per acre. The Rachel Carson School is an institutional use located within Kentland's community.

D. PROPOSED DEVELOPMENT

The Applicant proposes to build townhouses on the subject property under the optional method of application that allows restrictions on land use, density, bulk, and staging. The application was accompanied by a schematic development plan (SDP) and binding elements.

The SDP, unlike the largely illustrative SDP for proposed townhouses to the west under LMA G-834, contains a number of specific and binding elements, See, Ex. 46 (a). The SDP limits density to 45 dwelling units, which is substantially less than the maximum density of 59 units. This proposal is composed of 39 market rate townhouses with two car garages and driveways deep enough to accommodate additional parking; and 6 Moderately Priced Dwelling Units (MPDUs) with one-car garages and parking for one car in each driveway. The Applicant indicates that the MPDUs will be scattered throughout the project and will not be clustered in a single row, although this is not a binding element. The density of the project without counting MPDUs will be 6.4 dwelling units per acre, and the density with MPDUs will be 7.4 dwelling units per acre. All units will have brick front facades subject to site plan approval.

The SDP provides for ample guest parking at several locations with 191 total parking spaces. This level of parking will more than double the 94 space minimum requirement. The impervious surface of the site will be reduced from 75% to less than 40%.¹ The height of the townhouses will be limited to 35 feet, which is the maximum height.

The existing use operates under a water quantity waiver, and water quantity is currently managed with sand filters. The storm water management concept plan shows improvement in storm water control. The concept plan divides the site into two areas. Water quantity will be managed by a dry retention pond located in the northern portion of the property located adjacent to Route 28. Water quality will be managed in two ways: the majority of the site will be managed by underground storm filter structures; and, the remainder of the site will be treated by vegetated swales that will drain into the pond and be treated before release. The concept plan provides for significant improvement over existing conditions. The Montgomery County Department of Permitting Services approved the concept plan in February 2006, Ex. 25 (a).

A noise impact study was conducted by the Applicant to determine compliance with applicable noise standards. Both internal and external noise levels will be within acceptable levels at the location of the proposed townhouses. A 160 feet set back area is proposed for the northern area to abate noise impact from Route 28 and will include the storm water management facility.

Binding setbacks include a 40-foot setback from the property line with the historic Pleasant View Methodist Episcopal church and school property. About 20 feet of this setback area will be landscaped. Another 60-foot setback will be provided along the southern property line that will include a 50-foot forest and conservation strip of about one acre in size and an additional 10 feet setback from five adjacent single-family detached homes along Peach Leaf Court within the Orchard Knolls subdivision. The Applicant will maintain the forest and conservation area within this setback for a period of five years and then the area will be maintained by the homeowners association (HOA). There is an existing fence along the southern perimeter, which the Applicant will maintain until the

¹ The Applicant indicated that buildings would cover no more than 25% of the site, which is substantially less than the maximum of 35%, and green area would be at least 60% of the site, which will exceed the minimum requirement of 50%. These commitments were not made binding elements but may well be required by the Planning Board at the site plan stage.

formation of the HOA, which will then maintain the fence subject to the permission and approval of the lot owners adjacent to the fence. The only access to the site is proposed along the existing driveway from Route 28. The SDP is depicted below.



E. PUBLIC FACILITIES

Under the County's Adequate Public Facilities Ordinance ("APFO"), the Planning Board has the responsibility to assess whether public facilities will be adequate to support a

proposed development when it reviews a preliminary plan of subdivision, See, Mont. Co. Code §50-35(k). The Planning Board's application of the APFO is limited by parameters that the County Council sets each year in the Annual Growth Policy. While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council's determination in a rezoning case as to whether the reclassification would serve the public interest. The preponderance of evidence supports a factual conclusion that the development of the site with 45 townhouses will not cause an adverse impact on public facilities or services.

1. TRANSPORTATION

The Applicant submitted evidence to show that the proposed development of 45 townhouses would not generate an adverse impact on transportation services or facilities. Route 28 anchors the road network and it is now improved to a four lane divided highway in the vicinity of the site. There are three signalized intersections along Route 28 that are near the site.

The access to the subject property from Route 28 is not signalized, and site access is limited to right turn in and right turn out. Commuter traffic returning from the east will need to continue past the site, make a U turn at the next signalized intersection and proceed back east to the site access point. Likewise, traffic intending to head west must exit the site heading east and negotiate the left hand turning movement at the next signalized intersection to head west. Both signalized intersections are located about 1,000 feet from the site.

A critical lane volume analysis indicates that all relevant intersections operate within acceptable levels of service and will continue to do so with the addition of background traffic and the traffic generated by 45 townhouses on the site. The Applicant's expert in traffic engineering and transportation planning concluded that all turning movements by traffic generated by the site can be executed in a safe, adequate and efficient manner. The evidence indicates that access to the site will meet all design safety standards.

2. UTILITIES

The Applicant's evidence and the Technical Staff report demonstrate that the proposed development will be served by adequate utilities. Water and sewer facilities are in close proximity to

the site. Gas, electric, phone and cable facilities are all located along Route 28. Police, fire and rescue services are adequate.

3. SCHOOLS

The Applicant and the Technical Staff provided evidence that schools will be adequate for the development of 45 townhouses. The Montgomery County Public School staff conducted an analysis of school impact under the APFO test and methodology prescribed in the growth policy, and concluded that all schools have adequate capacity to support additional development.

III. SUMMARY OF TESTIMONY

The summary of testimony consists of the Applicant's Case in Chief and comments from two interested neighbors who support the project under the SDP and its binding elements.

A. APPLICANT'S CASE IN CHIEF

Daniel Lyons is Development Manager with Winchester Homes, Inc., the Applicant and a contract purchaser of the subject property. Mr. Lyons possesses a degree from Princeton University in geological engineering and a masters degree from Duke University in environmental management. Mr. Lyons is the Applicant's point person for the proposed development and made efforts to explain the proposed development to the surrounding community. He talked with people from the community about the proposed development and addressed their concerns. He also met with the neighbors and showed them plans and cross section drawings of the proposed townhouses. He agreed to a binding element of the SDP that provides for a conservation easement adjacent to adjacent residential homes. He also testified that a 6-foot, board on board perimeter fence extends along the southern property line although portions may fall inside neighbors' properties.

Alfred S. Blumberg has spent 35 years in Montgomery County as a land planner in both the public and private sector. He qualified as an expert witness in land use planning. He prepared a study for the use of the subject property under the RT-8 Zone. He also prepared a land use and zoning analysis. He described the subject property as a "T" shaped parcel of about 6.1

acres that is developed with three industrial type buildings used as the Christian Life Center. The site has about 200 feet of frontage along Route 28 and extends about 870 feet in depth.

Mr. Blumberg described the surrounding area as bounded by Quince Orchard Road on the west, an area about 700 feet north and parallel to Route 28 on the North, and Quince Orchard Knolls subdivision and Owen Glen Way to the south and east. He criticized the surrounding area recommended by Technical Staff as extending too far south for any reasonable impact. He also contended that the staff's use of Route 28 as the northern boundary for the area cuts off from consideration similar land uses within the Kentland's community that share the same access to Route 28. The road is a unifying factor and uses north of it should be included in the evaluation of the proposed development.

Mr. Blumberg also described the land use pattern. The subject property is located at the center of the surrounding area. Abutting the site to the north and west is the historic Pleasant View Methodist Episcopal church and school located on about 3 acres. Located across Route 28 is the Kentland's community, a mixed development that reflects both single-family detached homes and townhouses. The townhouses are developed at a density of 6.50 dwelling units per acre. The Rachel Carson School is an institutional use located within Kentland's. Located to the west is the Prince of Peace Lutheran Church. Located beyond the church is a medical and dental clinic special exception use. To the east of the site is the Owens Glen subdivision developed on 15.5 acres under the PD-3 zone with both single-family detached homes and townhouses. Some 134 townhouses are located directly east of the site and are developed at a density of 8.6 dwelling units per acre. The townhouse project does not contain any garages and it contains all surface parking. Located to the south and west is part of the Orchard Knolls subdivision, and five of its single-family detached homes abut the site. A perimeter fence extends along the property line in this area. He illustrated his testimony on the land use pattern with a series of photographs, Exs. 37, 38, 39 and 40.

Mr. Blumberg testified that the SDP proposes a maximum of 45 dwelling units including 39 market rate townhouses built at a width of 24 feet with two car garages and driveways deep enough to accommodate additional parking. The Applicant also proposes 6 MPDUs built at a width of

20 feet with one-car garages and parking for one car in each driveway. The MPDUs will be scattered throughout the project and will not be clustered in a single row. Guest parking will be provided at several locations and 191 total parking spaces will be provided. The impervious surface of the site will be reduced from over 70% to less than 40%. A storm water management facility will be located in the northern portion of the property within a 160 feet set back area that is designed to abate noise impact from Route 28.

Mr. Blumberg described additional amenities of the SDP. Binding setbacks include a 40-foot setback from the property line with the historic Pleasant View Methodist Episcopal church and school property. About 20 feet of this setback area will be landscaped. Another 60-foot setback will be provided along the southern property line that will include a 50-foot forest and conservation strip of about one acre in size and an additional 10 feet setback from homes within the Orchard Knolls subdivision. The Applicant will be responsible for maintenance of the forest and conservation strip for a period of five years and then it will be maintained by the HOA. There is an existing fence along the southern perimeter, which the Applicant or the HOA will maintain under the provisions of a binding element of the SDP. The only access to the site will be the existing driveway from Route 28.

Mr. Blumberg concluded that the proposed development is consistent with the master plan recommendations for this area of the County. He reviewed the objectives and goals of the master plan. The subject property will provide more affordable housing and will assist in the preservation of a historic church and school site by its setback provisions and less impervious development. The proposed development is consistent with the environmental and design principles of the master plan. The proposal will use existing infrastructure and will encourage ecologically sensitive and energy efficient development.

Mr. Blumberg opined that the proposed development satisfies the purpose clause of the RT-8 Zone because the site is appropriate for residential development at densities allowed in the RT Zones given of the character of existing development in the surrounding area which includes townhouses to the north and east. The townhouses to the east are developed at a density of 8.6 dwelling units per acre. The townhouses on the north side of Route 28 are developed at 6.5 dwelling

units per acre. The proposed development at a density of 7.4 dwelling units per acre is consistent with existing densities.

Mr. Blumberg concluded that the proposed development would be compatible with land uses in the surrounding area. The proposed residential townhouses are inherently compatible with single-family detached homes especially given the generous set backs and vegetative screening to be provided under the binding elements. The townhouses will be separated from the single family detached homes by a building setback ranging from 105 to 150 feet. Storm water management, townhouse configuration, setbacks and forest conservation areas will add to a compatible relationship between the subject property and surrounding land uses.

Mr. Blumberg testified that the proposed development satisfies all the development standards of the RT-8 Zone. The subject property will support the proposed density and building setbacks meet standards. The building height will meet zoning requirements. Likewise lot coverage, a 60% green area and extensive parking exceed zoning requirements. The SDP will be reviewed again at the site plan stage and the layout will meet all standards.

Mr. Blumberg concluded that the proposed development is in the public interest. The site is within the water and sewer envelope and capacity is adequate to handle the proposed density. Highway traffic capacity is adequate. The schools can accommodate the density proposed. There is adequate fire protection. The proposal satisfies a need for more affordable housing.

Michael Conley is a Vice President with Winchester Homes. He indicated that the Applicant will assume responsibility for the maintenance of the perimeter fence along the southern property line and it will be made part the HOA's responsibilities subject to consent and approval of the adjacent association.

Jeffrey Lewis, P.E. qualified as an expert witness in the field of civil engineering. He prepared a storm water management concept plan and preliminary engineering studies. He indicated that the site is not located in a special protection area. The concept plan divides the site into two areas. Water quantity will be managed by a dry retention pond located adjacent to Route 28. Water quality will be managed in two ways: the majority of the site will be managed by underground storm

filter structures; and, the remainder of the site will be treated by vegetated swales that will drain into the pond and be treated before release.

Mr. Lewis testified that the existing use operates under a water quantity waiver and water quantity is currently managed. Sand filters currently treat water quality. He concluded that the proposed storm water management plan will provide improvement over existing conditions. The concept plan was approved by the Montgomery County Department of Permitting Services in February, 2006, Ex. 25 (a).

Mr. Lewis concluded that the proposed development will be served by adequate public services and facilities. Water and sewer facilities are in close proximity to the site. Water, gas, electric, phone and cable facilities are all located along Route 28.

Gary Ehrlich, P.E., qualified as an expert witness in acoustical engineering. He reviewed the SDP to determine traffic noise impact on the subject property. He prepared a noise impact study in accordance with the county noise guidelines. He noted that day night average sound levels must not exceed 60 DNL in residential outdoor recreation areas. For townhouses, this area is considered the backyard. He projected that noise from the highway would be 58.5 decibels at the most impacted townhouse.

Mr. Ehrlich also testified that inside noise levels are evaluated at a 45-decibel level. Typical residential construction mitigates noise levels about 20 to 25 decibels so any outside decibels levels of 55 decibels or less could readily achieve the 45-decibel standard. He projected highway noise to the year 2025 and determined that building construction mitigation of 18 decibels would easily satisfy the County standard. He concluded that the proposed development will meet all County noise standards. He concluded that the proposed development would be compatible with the surrounding area in terms of acoustical standards.

Glenn Cook qualified as an expert witness in the field of traffic engineering and transportation planning. He described the surrounding road network. A four lane divided highway, Maryland Route 28, which extends past the subject property in an east-west direction, anchors the road network. There are two signalized intersections with Route 28 both about 1,000 feet east and

west of the site access road. The State Highway Administration imposes a right turn in and right turn out restriction on access to and from the site. This restriction is intended to improve highway safety and limit access and turning movements along the improved Route 28. He concluded that site access will be safe, adequate and efficient.

Mr. Cook indicated that the critical intersections identified by the technical staff are subject to a critical lane volume (CLV) capacity standard of 1,475. He conducted a CLV analysis of both intersections using existing traffic, background traffic levels provided by the staff and projections of traffic from the proposed development. This analysis indicates that these intersections will operate within acceptable levels of service.

B. NEIGHBORS' SUPPORT

Chuck Thompson represented the abutting Pleasant View Methodist Episcopal Church and adjacent school. Both buildings are historic. The buildings are operated by the Pleasant View Historical Association, which rents the church to the Mt. of Olives Church as it has for the past five years. The school is currently not used as a school but is used for church related functions. He does not oppose the revised SDP and supports its approval.

Michael Shankman is a resident of property that abuts the southeast end of the subject property. He estimated that his home is located about 50 feet from the property line. While his property is technically a part of the Orchard Knolls subdivision, the access is not by way of Blackberry Drive but from Quince Orchard Road into an enclave of 15 homes by way of Quince Mill Drive. He supports the proposed use as limited by the most recent SDP and binding elements.

IV. ZONING ISSUES

Having completed the findings of fact, it is now necessary to apply these facts to the zoning issues involved. The RT-8 Zone is a floating zone that contains eligibility criteria, development standards and a post-zoning review process that delegates to the Planning Board site-specific issues such as building location, landscaping and screening.

The zoning issues concern whether or not the proposed reclassification complies with the purposes and requirements of the RT-8 Zone, whether the reclassification would provide a form of

development that is compatible with existing and planned land uses in the surrounding area, whether the reclassification is consistent with the recommendations of the applicable master plan, and whether the reclassification is in the public interest.

A. PURPOSE CLAUSE

The application satisfies the development standards of the RT-8 Zone. The subject property exceeds the minimum tract area of 20,000 square feet. The proposed density of 6.4 dwelling units per acre is within the density limit of 8.0 dwelling units per acre not counting MPDUs. The building coverage, green area, and parking are all within specified requirements of development and will be reviewed again at the site plan stage.

This floating zone also requires that one of three possible locational requirements be met. The proposed rezoning must satisfy “a need for a buffer or transitional use between commercial, industrial or high density apartment uses and low density one-family use”, or it must be “designated on a master plan or other planning document for such development, or it must be determined upon the evidence *to be* “appropriate” for development at the location and at the density sought. See, Mont. Co. Code §59-C-1.721. The evidence indicates that the Application meets the “appropriate” standard.

The term “appropriate” is undefined in the zoning ordinance although it is linked to location and density. “Appropriate” as used in the zoning ordinance does not constitute a rigid standard to be mechanically applied. Rather, it is applied in a flexible manner so that each application can be evaluated on a case-by-case basis to determine if it is a proper fit given the location and density proposed. What is appropriate density at one location may be inappropriate at another.

The subject property is appropriate for residential development at densities permitted in the RT Zones. The proposed density of 6.4 dwelling units per acre is consistent with adjacent and nearby townhouses and other land uses in the surrounding area. Even counting the 7.4 dwelling units per acre density with the MPDU's, the proposed development is clearly appropriate as it is adjacent to

higher density townhouses and contains development limitations that render it compatible with its neighbors.

The District Council recently denied LMA G-834, a request for townhouses under the RT-8 Zone in the general vicinity of the subject property. There are superficial similarities between LMA G-834 and the instant case. Both properties are similar in size; the property in LMA G-834 contains 5.288 acres and the subject property contains 6.09 acres. Both properties are classified under the R-200/TDR Zone and both enjoy the same master plan recommendation to retain the current zoning. However, the similarities stop here and significant differences appear.

The property in LMA G-834 has a steep elevation increase of 10 to 15 feet as it confronts adjacent single-family detached homes in the Orchard Knolls subdivision. Indeed, the proposed development of LMA G-834 reflected a dramatic difference in the respective heights of the proposed townhouses and the existing homes. The peak of the townhouses would have ranged between 24.9 and 27.1 feet higher than the peak of existing homes. In this case there is no such elevation problem. The property in LMA G-834 does not abut existing townhouses and the subject property is adjacent to a 134-townhouse complex. Lastly there is a significant difference in the density proposed.

Density is one of the most important factors that determines the character and lifestyle of a community. *Fitzgerald v. Montgomery County*, 37 Md. App. 148, 376 A. 2d.1125 (1977). The Applicant in LMA G-834 failed to specify the intended density and the case was evaluated based on an assumption of maximum potential development without any MPDUs. *Wheaton Moose Lodge v. Montgomery Co.*, 41 Md. App. 401, 397 A. 250 (1979). The evaluation assumed 42 market rate or a density of 7.9 dwelling units per acre, which constituted a range of about 3 to 4 times the comparative densities of planned and existing adjacent uses. Here, the comparable density of 39 units (without MPDUs) is 6.4 dwelling units per acre, which is only 2.1 times the planned density and has a lower density than the adjacent existing townhouse use. In addition, the instant application has a very

specific SDP with clear density limits and other amenities that limit any intrusive development that would threaten the integrity of adjacent uses.

B. COMPATIBILITY

An application for a floating zone reclassification must be evaluated for compatibility with existing and planned uses in the surrounding area. The latest version of the SDP provides a form of development that is compatible with adjacent uses. Indeed, the Applicant revised the SDP and the binding elements in an attempt to render the development more compatible with adjacent uses. The extensive setbacks, fencing, landscaping, conservation areas, environmental controls and reduced imperviousness all support a finding of compatibility.

C. MASTER PLAN

The Potomac Sub-region Master Plan, adopted and approved in 2002, explicitly recommends that the subject property remain classified under the R-200/TDR Zone. Nevertheless, the proposed residential land use is consistent with the land use recommendation of the plan. The SDP contains limitations and amenities that offset any impact of higher density.

The master plan contains goals and objectives relating to smart growth, affordable housing and historic preservation that are promoted by the proposed development. The proposed development will also locate housing in an area of the County where adequate infrastructure exists. The SDP contains a specific and binding commitment to provide affordable housing and locate it on site. The SDP also provides setbacks and landscaping that will enhance the preservation of an existing and adjacent historic enclave.

D. PUBLIC INTEREST

When evaluating the public interest, the District Council normally considers master plan conformity, recommendations of the Planning Board and Technical Staff, and other public interest factors such as public amenities and affordable housing. While the proposal does not conform to the

explicit zoning recommendations of the master plan, the favorable Technical Staff and Planning Board recommendations indicate consistency with general planning objectives for this area of the County.

The Applicant proposes an attractive townhouse development with an affordable housing component next to a historic property which will be protected by setbacks and landscaping. The proposed development will provide environmental improvements to the site in the form of better storm water management facilities and reduced impervious surface and runoff. The proposed development will also be supported by adequate public facilities.

For all of these reasons, the proposed reclassification bears sufficient relationship to the public interest to warrant its approval.

V. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I make the following conclusions:

1. The application satisfies the requirements of the purpose clause;
2. The application proposes a compatible form of development;
3. The application conforms with goals and objectives of the Potomac Sub-region Master Plan and is consistent with its overall recommendations even though it does not conform with the explicit zoning recommendation for this location; and
4. The application is in the public interest.

VI. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-839, filed on September 6, 2005, and requesting reclassification from the R-200/TDR Zone to the R-T 8 Zone of 6.09 acres of land known as Parcels N-721 and N-667, located at 11800 Darnestown Road, Gaithersburg, Maryland, in the 6th Election District, be approved in the amount requested and subject to the specifications and requirements of the Final Schematic Development Plan, Ex. 46(a); provided that the Applicant

submits to the Hearing Examiner for certification a reproducible original and three copies of the Schematic Development Plan approved by the District Council within 10 days of approval.

Dated: June 23, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. J. Tierney", is centered on a light gray rectangular background.

Philip J. Tierney
Hearing Examiner